

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

**IN RE: COLGATE-PALMOLIVE
SOFTSOAP ANTIBACTERIAL HAND
SOAP MARKETING AND SALES
PRACTICE LITIGATION**

MDL Docket No. 12-md-2320-pb

ALL CASES

Judge Paul Barbadoro

CLASS ACTION

**PLAINTIFFS'¹ UNOPPOSED MOTION TO APPOINT
INTERIM CASE LEADERSHIP PURSUANT TO FED. R. CIV. P. 23(g)**

NOW COME Plaintiffs, for the reasons set forth herein and in support of their Motion to Appoint Interim Case Leadership Pursuant to Fed. R. Civ. P. 23(g), respectfully move the Court, to appoint Lucy J. Karl as Plaintiffs' Interim Class Counsel and the remainder of the leadership structure proposed below. All Plaintiffs agree to this motion and Defendant takes no position thereon. In support of their motion, Plaintiffs state as follows:

1. Plaintiffs in this matter, by their counsel's private ordering efforts, have agreed to form a strategic alliance to prosecute this litigation efficiently and effectively by combining forces and working together for the collective benefit of the members of the proposed classes (collectively the "Class" for purposes of this motion).

2. Plaintiffs propose appointment of Lucy J. Karl as Plaintiffs' Interim Class Counsel ("Interim Class Counsel"), as well as a Plaintiffs Executive Committee ("PEC") comprised of Richard J. Arsenault, Eric D. Holland, Adam J. Levitt, John A. Peca, and Charles

¹ "Plaintiffs" are all of the named plaintiffs of all of the cases comprising this multidistrict litigation: (1) *Nieblas v. Colgate-Palmolive Company*, Case No. 11-cv-438 (C.D. Cal.); (2) *Rosen v. Colgate-Palmolive Company*, Case No. 11-cv-62242 (S.D. Fla.); (3) *Pearson v. Colgate-Palmolive Company*, Case No. 11-cv-6068 (N.D. Ill.); (4) *Dyke v. Colgate-Palmolive Company*, Case No. 11-cv-1750 (D. Nev.); (5) *Emery v. Colgate-Palmolive Company*, Case No. 3:11-cv-00797 (S.D. Ill.); (6) *Elstein v. Colgate-Palmolive Company*, Case No. 11-cv-81165 (S.D. Fla.); (7) *Porter v. Colgate-Palmolive Company*, Case No. 11-cv-644 (M.D. Fla.); (8) *Katsigianis v. Colgate-Palmolive Company*, Case No. 11-cv-427 (D.N.H.); (9) *Donohue v. Colgate-Palmolive Company*, Case No. 11-cv-7026 (D.N.J.).

Schaffer. The PEC will work with Interim Class Counsel in organizing and developing a litigation strategy and in prosecuting this action on behalf of Plaintiffs and the other Class members. Plaintiffs also respectfully request that the Court appoint a Plaintiffs' Steering Committee ("PSC"), comprised of Matthew B. Butler, Jordan L. Chaikin, Laurence D. King, David C. Rash, and James C. Shah,² (Hereinafter, Interim Class Counsel, the PEC, and the PSC are collectively referred to as "Plaintiffs' Proposed Leadership Group").

3. Plaintiffs' Proposed Leadership Group has the requisite diversity and infrastructure to handle the litigation and will ensure an efficient operation and the best possible representation for the proposed Classes consistent with the Federal Rules,³ the Manual for Complex Litigation,⁴ and instructive jurisprudence.

4. Plaintiffs' Proposed Leadership Group is supported by all Plaintiffs and their counsel with cases comprising this multidistrict litigation, including many firms with substantial consumer protection litigation practices.

5. Rule 23(g)(3) specifically authorizes the Court to "designate interim class counsel to act on behalf of a putative class before determining whether to certify the action as a class action."⁵ The attorneys comprising Plaintiffs' Proposed Leadership Group satisfy the criteria of Rule 23(g)(1)(A). Specifically,

- Counsel's efforts to identify or investigate potential claims in the action,

² A substantially identical leadership group was reviewed and approved by Judge McAuliffe in *In Re: Dial Complete Marketing and Sales Litigation*, MDL No. 11-MD-2263-SM (D.N.H.), which involves similar marketing and sales claims regarding the (in)effectiveness of triclosan in antibacterial soaps.

³ The Fed. R. Civ. P. 23(g) criteria are designed to enable the Court, in class action cases, to select interim case leadership best-suited to skillfully and efficiently prosecute a litigation in the best interests of the proposed classes and/or subclasses.

⁴ *Manual for Complex Litigation*, Fourth Edition (the "*Manual*").

⁵ The Manual suggests a variety of factors for the Court to consider in its decision regarding the appointment of designated counsel. See Manual at §10.224. These factors are similar to the criteria in the Federal Rules of Civil Procedure regarding the appointment of class counsel or interim class counsel.

- counsel's experience in handling class actions, other complex litigation, and claims of the type asserted in the action,
- counsel's knowledge of the applicable law, and
- counsel's willingness to commit substantial resources, both time and monetary, to representing the class.

Fed. R. Civ. P. 23(g)(1)(A).

6. Appointing Plaintiffs' Proposed Leadership Group – including Ms. Karl as Plaintiffs' Interim Class Counsel – ensures that, pursuant to Rule 23(g)(1)(A)(iv), “the resources that counsel will commit to representing the class” are sufficient and also that the litigation can be directed most efficiently. Plaintiffs are mindful of the need to avoid duplication of resources and effort and would ensure that the litigation is prosecuted in an efficient and coordinated fashion while drawing on the resources and expertise that multiple firms can bring to bear.⁶

7. Appointing Plaintiffs' Proposed Leadership Group guarantees collegial decision-making and the prosecution of this case by like-minded counsel. Correspondingly, this group is of optimal size and experience to provide the personnel and resources necessary to fully prosecute and protect Plaintiffs' and the other Class members' interests against Colgate-Palmolive.⁷ Plaintiffs' Proposed Leadership Group possess ample personnel and financial resources to aggressively and ably litigate this action.

8. The attorneys comprising Plaintiffs' Proposed Leadership Group have already invested substantial time and resources to conducting this litigation. These attorneys have,

⁶ See, e.g., *In re Text Message Antitrust Litig.*, Order No. 5 – Appointing Liaison Counsel and Plaintiffs' Steering Committee Members, Case No. 1:08-cv-07082 (MDL No. 1997) (N.D. Ill. Feb 10, 2009) (appointing liaison and multi-firm steering committee); *In re Genetically Modified Rice Litig.*, Order Appointing Leadership Counsel, Case No. 4:06 MD 1811 CDP (MDL No. 1811) (E.D. Mo. Apr. 18, 2007) (appointing two co-lead counsel and six lawyers to Plaintiffs' Executive Committee).

⁷ Leading commentators and the Manual for Complex Litigation advise: “court[s] should be cognizant of the possibility that the class could benefit from the combined resources and expertise of a number of class counsel, especially in a complex case where the defendants are represented by a number of large and highly qualified law firms.” Third Circuit Task Force Report on Selection of Class Counsel, 208 F.R.D. 340, 417 (2002) (footnote omitted).

among other things, been researching and identifying the claims at issue; conducting industry research; working closely with the leading experts in the United States in the areas of epidemiology, microbiology, public health, and hand hygiene, as well as other relevant experts, in developing their theories of liability and recovery; working cooperatively with Colgate-Palmolive's counsel to reach agreement on a case management schedule for presentment and consideration by the Court.

9. The attorneys comprising Plaintiffs' Proposed Leadership Group have substantial experience in litigating claims similar to those here, possess knowledge of the applicable law, and have experience and expertise in handling class actions and complex litigation, including consumer protection and misrepresentation cases.

WHEREFORE, for all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their unopposed Motion to Appoint Interim Case Leadership Pursuant to Fed. R. Civ. P. 23(g) in the manner set forth above. A proposed Order is being submitted contemporaneously herewith.

Dated: May 8, 2012

Respectfully submitted,

/s/ Lucy J. Karl

Lucy J. Karl

NH Bar No. 5547

SHAHEEN & GORDON, P.A.

107 Storrs Street

P.O. Box 2703

Concord, New Hampshire 03302

Telephone: (603) 225-7262

Facsimile: (603) 225-5112

lkarl@shaheengordon.com

Plaintiffs' Proposed Interim Class Counsel

Richard J. Arsenault
NEBLETT, BEARD & ARSENAULT
2220 Bonaventure Court
P.O. Box 1190
Alexandria, Louisiana 71309
Telephone: (800) 256-1050
Facsimile: (318) 561-2591
rarsenault@nbalawfirm.com

Adam J. Levitt
**WOLF HALDENSTEIN ADLER
FREEMAN & HERZ LLC**
55 West Monroe Street, Suite 1111
Chicago, Illinois 60603
Telephone: (312) 984-0000
Facsimile: (312) 984-0001
levitt@whafh.com

Eric D. Holland
**HOLLAND GROVES SCHNELLER
& STOLZE, LLC**
300 North Tucker Boulevard, Suite 801
St. Louis, Missouri 63101
Telephone: (314) 241-8111
Facsimile: (314) 241-5554
eholland@allfela.com

John A. Peca
**CLIMACO, WILCOX, PECA,
TARANTINO & GAROFOLI CO LPA**
55 Public Square, Suite 1950
Cleveland, Ohio 44113
Telephone: (216) 621-8484
Facsimile: (216) 771-1632
japeca@climacolaw.com

Charles E. Schaffer
LEVIN, FISHBEIN, SEDRAN & BERMAN
510 Walnut Street, Suite 500
Philadelphia, Pennsylvania 19106
Telephone: (215) 592-1500
Facsimile: (215) 592-4663
cschaffer@lfsblaw.com

Plaintiffs' Proposed Executive Committee

David C. Rash
ALTERS LAW FIRM, P.A.
4141 Northeast 2nd Avenue
Miami, Florida 33137
Telephone: (305) 571-8550
Facsimile: (305) 571-8558
david@alterslaw.com

Jordan L. Chaikin
PARKER WAICHMAN LLP
3301 Bonita Beach Road, Suite 101
Bonita Springs, Florida 34134
Telephone: (239) 390-1000
Facsimile: (239) 390-0055
jchaikin@yourlawyer.com

James C. Shah
**SHEPHERD, FINKELMAN, MILLER
& SHAH, LLC**
35 East State Street
Media, Pennsylvania 19063
Telephone: (610) 891-9880
Facsimile: (610) 891-9883
jshah@sfmslaw.com

Laurence D. King
KAPLAN FOX & KILSHEIMER LLP
350 Sansome Street
Suite 400
San Francisco California 94104
Telephone: (414) 772-4700
Facsimile: (414) 772-4707
lking@kaplanfox.com

Matthew B. Butler
NICHOLAS & BUTLER LLP
225 Broadway – 19th Floor
San Diego, California 92101
Telephone: (619) 325-0492
Facsimile: (619) 325-0496
mbutler@nblaw.org

Plaintiffs' Proposed Steering Committee

CERTIFICATE OF SERVICE

The undersigned certifies that, on May 8, 2012, she caused this document to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of filing to counsel of record for each party.

Undersigned counsel further certifies that on May 8, 2012, she caused the document to be forwarded to counsel below by First Class United States Mail, proper postage prepaid.

Conventionally Served:

Angela L. Harris, Esquire
Quinn, Emanuel, Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, New York 10010

Stephen A. Swedlow, Esquire
Quinn Emanuel Urquhart & Sullivan, LLP
500 West Madison Street, Suite 2450
Chicago, Illinois 60661

Natalie Finkelman Bennett, Esquire
Shepherd Finkelman Miller & Shah, LLP
35 East State Street
Media, Pennsylvania 92101

William J. Pinilis, Esquire
Kaplan Fox & Kilsheimer LLP
160 Morris Street
Morristown, New Jersey 07960

Christopher J.M. Collings, Esquire
Morgan Lewis & Bockius
5300 Wachovia Financial Center
200 South Biscayne Blvd
Miami, Florida 33131

John P. Echeverria, Esquire
Echeverria Law Office
9432 Double R Blvd
Reno, Nevada 89521

Jill Garcia, Esquire
Ogletree Deakins Nash Smoak & Stewart PC
Wells Fargo Tower
3800 Howard Hughes Parkway, Suite 1500
Las Vegas, Nevada 89169

Jayne Arnold Goldstein, Esquire
Shepard Finkelman Miller & Shah LLP
1640 Town Center Circle, Suite 216
Weston, Florida 33326

Dated: May 8, 2012

By: /s/ Lucy J. Karl
Lucy J. Karl, NH Bar #5547